

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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IN RE: BAIR HUGGER FORCED AIR  
WARMING PRODUCT LIABILITY  
LITIGATION

MDL No. 15-md-02666 (JNE/DTS)

This Document Relates To:

RENA BURCH,

Civil Action No. 17-cv-4288

Plaintiff,

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**PLAINTIFF'S RESPONSE TO DEFENDANT'S SIXTH MOTION TO DISMISS  
FOR FALIURE TO COMPLY WITH PRETRIAL ORDER NO. 23**

NOW COMES Plaintiff, Rena Burch, identified in Defendants' Sixth Motion to Dismiss for Failure to Comply with Pretrial Order No. 23 [Dkt. 1740], and by and through undersigned counsel submits this, his Response to Defendants' Motion to Dismiss, and would respectively show the Court the following:

1. In 2015, Ms. Rena Burch contacted undersigned counsel regarding an infection and subsequent treatment that he experienced due to the use of a Bair Hugger patient warming device during an orthopedic surgery.

2. Counsel worked to obtain medical records and billing records to move forward with the case. Those records indicated that a Bair Hugger device was used during the original surgery.

3. On September 15, 2017, counsel filed the current action to comply with what was identified as the applicable statute of limitations deadline for the relevant claim.

4. In compliance with Pre Trial Order No. 14, counsel timely submitted the Plaintiff Fact Sheet in compliance. Any deficiencies issued by Defendants were timely resolved without requiring Court intervention.

5. On or about December 4, 2018, Counsel was informed Plaintiff passed away on May 14, 2018. The Suggestion of Death was filed on February 14, 2019.

6. Plaintiff's son-in-law, Ricky Ward, was the named executor in the Last Will and Testament of Rena Burch and probate proceedings were initiated on or about February 1, 2019 for the purpose of prosecuting this action.

7. Counsel will file Plaintiff's Motion to Substitute Party and an updated, verified Plaintiff Fact Sheet prior to the expiration of 90 days from the filing of the Suggestion of Death.

8. While Plaintiff's filing of the Suggestion of Death was outside of the 90 day window required by Pretrial Order No. 23, Plaintiff has complied with the spirit of the order by proceeding in a timely fashion.

Accordingly, undersigned counsel requests that the current action not be dismissed with prejudice.

RESPECTFULLY SUBMITTED,

Dated: February 14, 2019

/s/William E. Hymes  
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